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Supreme Court, U.S.
FILED

06-688 AUG 2 - 2006

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Record No.:

VICTOR A. MOTLEY,
Petitioner,

v.

UNITED STATES

And

COMMONWEALTH OF VIRGINIA
ex rel. VIRGINIA STATE BAR
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
U.S. COURT OF APPEALS,
FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether Declaratory Judgment, 28 U.S.C.A., Sec. 2201 is the proper procedure to challenge the U.S. Constitutionality of Virginia Procedure?
2. Whether the Administrative hearings of the Supreme Court of Virginia affirming the findings of the Virginia State Bar were adjudications without jurisdiction?
3. Whether application of the Rooker Doctrine violates the U.S. Constitution, Supremacy Clause and Separation of Powers?
4. Whether application of the Rooker Doctrine violates the U.S. Constitution, Amend. XIV, Due Process and Equal Protection Clause and the Privileges and Immunities Clause?
5. Whether application of the Rooker Doctrine denies petitioner access to the Courts to exercise his Consitutional Rights, when petitioner has no other remedy at law?

6. Whether the Rules of Supreme Court of Virginia, Part 6, which can deprive a person of Life, Liberty and Property without Due Process and Equal Protection as prescribed by the U.S. Constitution, Amend's. V and XIV is a controlling tactic that operates as a Badge and Incident of Slavery in violation of the U.S. Constitution, Amend. XIII?

7. Whether the intertwinement between State and Federal Bar Licensure and the affect of State Procedure on the attorney's right to practice law federally and citizens of foreign states right to access to legal counsel, if procedurally unconstitutional, violates the Interstate Commerce Clause of the U.S. Constitution, Art. I, Sec. 8?

PARTIES TO THE PROCEEDING and RULE 29.6 STATEMENT

Victor A. Motley, pro se, Petitioner

Peter R. Messitt, Senior Assistant Attorney General
Represents: Commonwealth of Virginia
Virginia State Bar

U.S. Solicitor General

Petitioner is an individual with no corporate disclosures.

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OPINIONS BELOW

1. Civ[illegible]tion No. 3:05cv427 The Order of the U.S. District Court, ED VA granting defendants Motion to Dismiss (App., infra., A1)

2. The Order of the U.S. District Court, ED VA denying the Motion to Rehear. (App., infra., A2)

3. The Order of the U.S. Court of Appeals, 4th Cir. Affirming the judgment of the District Court. (App., infra., A3)

4. The Order of the U.S. Court of Appeals denying the petition for rehearing en banc. (App., infra., A4)

JURISDICTION

a. U.S.District Court, ED VA, Record No.: 3:05cv427. the U.S. District Court granted defendants Motion to Dismiss on Sept. 22, 2005 The U.S. Court f Appeals, 4th Cir. Affirmed the judgment of the District Court on April 25,2006. The U.S. Court of appeals, 4th Cir. Denied the

petition for rehearing en banc on June 6, 2006.

Jurisdiction in this action is to redetermine whether the U.S. District Court, ED-VA wrongfully denied petitioner jurisdiction to file a Bill of Complaint pursuant to 28 U.S.C.A., Sec. 2201, and now petitioner seeks relief from this Court, asking that the Court clarify whether the Rooker Doctrine applies to Petitioners challenges to State Procedure, and whether the Rooker Doctrine violates the U.S. Constitution.

b. Jurisdiction of this action is to determine whether the Commonwealth of Virginia with the intertwinement of State and Federal Bar Licensure, federal employment and Petitioner's U.S. Constitutional Rights, is violating the Interstate Commerce Clause. U.S. Constitution, Art. I, Sec. 8

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. U.S. Constitution, Art. I, Sec. 8: Intertwinement of State and Federal Bar Licensure and State Procedure

with respect to the Interstate Commerce Clause.

2. U.S. Constitution, Amend. IV: Security from Unwarrantable Search and Seizure.

3. U.S. Constitution, Amend. V: Right to Due Process of Law.

4. U.S. Constitution, Amend. XIV: Citizenship Rights, Due Process and Equal Protection.

5. U.S. Constitution, Amend. XIII: State Deprivation of Constitutional Rights as a Badge of Slavery.

6. U.S. Constitution, Amend VIII: Cruel and Unusual Punishment not reviewable without jurisdiction.

7. U.S. Constitutional Rights without Jurisdiction is sine qua non.

8. 28 U.S.C.A., Sec. 2201; Jurisdiction to file for Declaratory Judgment.

STATEMENT OF THE CASE

The Richmond Circuit Court and the Supreme Court of Virginia defended the action of the Virginia State Bar in issuing the subpoena duces

tecum and oral amendment without notice to petitioner and defended the findings of the Richmond Circuit Court and the Supreme Court of Virginia in finding that petitioner had committed a misdemeanor when petitioner has not been indicted, charged, tried nor convicted of a misdemeanor; without consideration of petitioners U.S. Constitutional Rights.

The Procedure by which the Commonwealth of Virginia made these findings is at issue.

The use of Declaratory Judgment in the U.S. District Court to challenge Virginia Procedure is at issue.

SUMMARY OF THE REASONS FOR GRANTING THE PETITION

Petitioner has set forth Compelling Reasons for Granting of this Writ of Certiorari in that the Supreme Court of Virginia, U.S. District Court, ED VA and the U.S. Court of Appeals, 4th Cir. has entered a decision in conflict with the U.S.

Constitution and the Rooker-Feldman Doctrine, as follows:

1. Whether the U.S. District Court had jurisdiction to review the Commonwealth's Procedure for issuance of a subpoena duces tecum and oral amendment without NOTICE to petitioner violated the U.S. Constitution, Amend. IV, Security from Unwarrantable Search and Seizure, is at issue.
2. Whether the Commonwealth's Procedure of reliance on the Administrative findings of the Virginia State Bar and Supreme Court of Virginia that Petitioner had committed a misdemeanor, violated the findings of Senior Judge Williams in Victor A. Motley v. Virginia Supreme Court, (Appendix p. 5) and petitioners U.S. Constitution, Amend V & XIV Rights, is at issue.
3. The U.S. Constitution is the Supreme Law of the land, not Commonwealth of Virginia

Procedure. Without review of Commonwealth of Virginia Procedure, petitioner's U.S. Constitutional guarantees are subordinate to States Rights.

4. The Rooker –Feldman Doctrine states: "A distinction must be made between action seeking review of the State Court decisions themselves and those cases challenging the Constitutionality of the process by which the State Court decree resulted." The Rooker Doctrine makes a distinction between review of State Court decisions and review of State Procedure. State Procedure is at issue, and has not been measured by U.S. Constitutional standards; the Supreme Law of the land.

REASONS FOR GRANTING THE PETITION

PETITIONER HAS SET FORTH

COMPELLING REASONS FOR THE

GRANTING OF THIS WRIT OF CERTIORARI:

A. WHETHER THE ADMINISTRATIVE HEARINGS OF THE SUPREME COURT OF VIRGINIA AFFIRMING THE FINDINGS OF THE VIRGINIA STATE BAR WERE JUDICIAL IN NATURE AND ADJUDICATIONS WITHOUT JURISDICTION?

RULE

Constitution of Virginia, Art. VI, Sec. 1
Limits the jurisdiction of the Supreme Court of Virginia to cases of habeas corpus, mandamus and prohibition, in matters of censure, retirement, and removal under Section 10 of this Article, and to answer questions of state law certified by a court of the United States or the highest appellate court of any state. All other jurisdiction is appellate.

The Supreme Court shall, by virtue of this Constitution, have appellate jurisdiction in cases involving the Constitutionality of a law under this Constitution or the Constitution of the United States and in cases involving the life or liberty of any

person. Constitution of Virginia, Art. VI, Sec. 1; Code of Virginia, Sec. 8.01-670

The Virginia General Assembly has not granted the Virginia State Bar authority to operate as a Court of competent jurisdiction, all judges are appointed by the General Assembly. Constitution of Virginia, Art. VI, Sec. 1

Code of Virginia, Sec. 54.1-3910 states: "The Virginia State Bar shall act as an administrative agency of the court for the purpose of investigating and reporting violations".

Rules of Supreme Court of Virginia, Part 6 Organization & Government of the VSB, Sec. 10(h)(v)(2) specifically prescribes for prosecution of the Unauthorized Practice of Law by the Attorney General or Commonwealth Attorney.

Code of Virginia, Sec. 54.1-3935, Procedure for Revocation of License, contains jurisdictional requirements, none of which were met by the Virginia State Bar.

Although disciplinary proceedings against members of a state bar are peculiarly matters of state concern, they cannot be conducted in violation of the U.S. Constitution. Schware v. Board of Bar Examiners of New Mexico, 353 U.S. 232 (1957)

F ACTS

The Virginia General Assembly has not granted the Virginia State Bar authority to operate as a court.

The Virginia General Assembly has not granted the Supreme Court of Virginia general jurisdiction of Administrative Hearings.

Petitioner , to properly defend himself made the following filings:

(a) Filed a Motion to Quash Certification: said Motion was Denied due to Lack of Jurisdiction. (Bill of Complaint, Appendix p. 146-151)
(b) Filed a Request for Production of Documents; said Motion was Denied due to Lack of Juisdiction. (Bill of Complaint, Appendix p. 152-154)
(c) Filed a Motion to Suppress, Motion for Bill of Particulars and Motion to Compel; said Motions were Denied due to Lack of jurisdiction. (Bill of Complaint, Appendix p. 155-158)
(d) Filed a Freedom of Information Request; said request was Denied. (Bill of Complaint, Appendix p. 159)
(e) Filed a Demurrer; said demurrer was Denied due to Lack of Jurisdiction and it is stated in the Order of the Virginia State Bar and Supreme Court of Virginia that said Demurrer was not put into writing, which is FALSE. (Bill of Complaint, Appendix p. 160-164)

A property right (Motley's Bar License) which is created and protected by law, an adjudication regarding the creation, existence, or termination of that right can be made only by a court of competent jurisdiction. Holland v. Johnson, 241 VA 553, 403 SE2d 356 (1991)

Motley filed a Bill of Complaint pursuant to 28 U.S.C.A., Sec. 2201 in the U.S. District Court for the Eastern District of Virginia, Richmond Division.

Said Bill of Complaint challenges the Constitutionality of the process by which a criminal finding can be made and compliance of the Rules of Supreme Court of Virginia, Part 6 with the U.S. Constitution.

ARGUMENT

The first question we must answer is whether the Committee's proceedings qualify as judicial action as opposed to administrative or ministerial processes. Allstate Ins. Co. v. West Virginia, 233 F3d 813 (4th Cir. 2000)

If petitioner was tried criminally, in defense of himself, he would be entitled to a reading of his Miranda Rights, Discovery, an Arraignment, an appeal from the General District Court to a Court of Record, appeal to the Court of Appeals, appeal to the Supreme Court of Virginia; appeal to the U.S. Supreme Court, would be entitled to argue his U.S. Constitutional Rights, be able to file a Writ of Habeas Corpus in State and Federal Court, and be able to file a Declaratory Judgment in State and Federal Court to verify that his U.S. Constitutional Rights were not violated.

Here petitioner was tried for a misdemeanor, adjudged by a Committee not appointed by the Virginia General Assembly that has not taken an oath to uphold the laws of the United States and Commonwealth of Virginia, with no right to discovery or other procedural method to challenge the evidence, not be entitled to Habeas Corpus review and be convicted on evidence not reviewable by U.S. Constitutional standards.

The nature of the proceeding, however, cannot be determined without examining the authority granted by the Virginia General Assembly to conduct the hearing.

Here, the action of the Virginia State Bar and Supreme Court of Virginia was without legal jurisdiction. The Constitution of Virginia, nor any Statute gives the Virginia State Bar or Supreme Court

of Virginia authority to act beyond the boundaries established by the Virginia General Assembly.

The Order entered by the Virginia Supreme Court affirming an Order of the Virginia State Bar is not a conviction by a Court of competent jurisdiction. Victor A. Motley v. Virginia State Bar, 3:01CV042 (USDC ED VA 2001), Appendix p. A21

Absent a valid judgment, Federal District Court had jurisdiction of civil rights act suits challenging State Disciplinary Statutes and Disciplinary Rules since the complaints were original complaints and were not merely proceedings seeking Federal Appellate Review of State Court decisions. Getty v. Reed, 547 F2d 971 (1977)

CONCLUSION

The Virginia Constitution and statutory limitations on jurisdiction as made by the Virginia General Assembly conferred no authority on the Virginia State Bar and Supreme Court of Virginia to make a legal ruling on the issues. Absent a valid judgment, petitioner was not seeking Federal Review of a State Court decision, said Bill of Complaint was a original action with jurisdiction.

B. WHETHER APPLICATION OF THE ROOKER DOCTRINE VIOLATES THE U.S. CONSTITUTION, SUPREMACY CLAUSE AND SEPARATION OF POWERS?

RULE

No state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. U.S. Constitution, Amend. XIV

This Constitution, and the laws if the United States which shall be made in pursuance thereof shall be the supreme law of the land; and the judges in every State shall be bound thereby... the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution... U.S. Constitution, Art. VI

A distinction must be made between action seeking review of the State Court decisions themselves and those challenging the Constitutionality of the process by which the State Court decree resulted. Rooker v. Feldman, supra.

FACTS

Motley filed a Bill of Complaint pursuant to 28 U.S.C.A., Sec. 2201 in the U.S. District Court for the Eastern District of Virginia, Richmond Division.

Said Bill of Complaint challenges the Constitutionality of the process, to wit:

(a) Compliance of the Rules of Supreme Court of Virginia, Part 6; with the U.S. Constitution.

(b) Whether Motley's U.S. Constitution, Amend. IV Right to be secure from unwarrantable search and seizure was violated by State Procedure.

(c) Whether a State Court can legally find that petitioner committed a misdemeanor when petitioner has not been indicted, charged, tried nor convicted, by a Court of Competent Jurisdiction, violates the U.S. Constitution, Amend. V.

ARGUMENT

The Rooker v. Feldman case itself states, that if The constitutionality of the process is being challenged, that is not an action seeking review of a State Court decision. Rooker v. Feldman, 460 U.S. 487, 488 (1982)

If no State Court process could be challenged, U.S. Constitution would not be the supreme law of the land, and States could dictate to the Federal Government.

CONCLUSION

The District Court's, DENIAL OF JURISDICTION did not address the limitations the Rooker v. Feldman case places on itself, nor the acknowledgement the Rooker v. Feldman case makes of the Supremacy Clause, by allowing challenges to Procedure, as distinct from Final Decisions that were not appealed to the U.S. Supreme Court.

C. WHETHER APPLICATION OF THE ROOKER DOCTRINE VIOLATES THE U.S.CONSTITUTION, 14TH AMENDMENT, DUE PROCESS AND EQUAL PROTECTION CLAUSE AND THE PRIVILEGES AND

IMMUNITIES OF CITIZENS?

RULE

All persons born and naturalized in the United States... are citizens of the United States... No state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. U.S. Constitution, Amend. XIV

If application of the general rule deprives an individual of interest on "liberty" or "property", the individual must be afforded an appropriate hearing. Goldberg v. Kelly, 397 U.S. 254 (1970)

FACTS

Motley is a citizen of the United States whom happens to live in the State of Virginia, not a citizen of Virginian whom happens to live in the United States.

The U.S. Constitution is the Supreme Law of the Land to which all state legislatures, executives and judicial officers are bound by oath.

Motley, in his Bill of Complaint, filed in the U.S. District Court for the Eastern District of Virginia, Richmond Division has alleged that the State of has made and is enforcing a process that has deprived him of the Privileges and Immunities shared by other U.S. citizens, has alleged that a State of Virginia process is depriving him of "life, liberty and property" without affording him Due Process of Law and has alleged that a State of Virginia process is Depriving him

of Equal Protection of the Laws and amounts to Cruel and Unusual Punishment, and said deprivations violate the U.S. Constitution, Amend. VIII.

ARGUMENT

The Rooker v. Feldman case itself states that if the Constitutionality of the state process is being challenged, that is not an action seeking review of a State Court decision.

State Procedure must be measured by the standards granted to all citizens as set forth in the Supreme law of the land, the U.S.Constitution.

CONCLUSION

Said DENIAL OF JURISDICTION makes no reference to the limitation the Rooker Doctrine places on itself when the Constitutionality of the process is being challenged. Due Process and Equal Protection and State Rule violations are challenges to the Process.

D. TO DENY JURISDICTION, THE FOUNDATION OF CONSTITUTIONAL RIGHTS, IS TO DENY CONSTITUTIONAL RIGHTS WHEN APPLICANT HAS NO OTHER REMEDY AT LAW?

RULE:

The very purpose of the Declaratory Judgment Act, 28 U.S.C.A., Sec. 2201, is to supply relief in an action otherwise beyond the

power of effective judicial determination. Worthington v. Community Credit Corp., 157 F. Supp. 497 (1957)

Failure to comply with State law amounts to a violation of an interest protected by the U.S. Constitution, Amend. XIV; Counts v. Newhart, 915 F. Supp. 579 (1996)

FACTS:

Motley has raised issue with the State of Virginia's failure to adhere to his plea to have his U.S. Constitutional Rights heard by a court of competent jurisdiction.

Motley has raised issue with the State of Virginia's failure to comply with State Law. Motley has exhausted his administrative remedies as prescribed by the Rules of Supreme Court of Virginia, Part 6.

Said Rules of Supreme Court of Virginia, Part 6 and the Code of Virginia, Sec. 54.1-3915 grants jurisdiction of the courts but places restrictions on the jurisdiction and authority of the Supreme Court with respect to the method of procedure for the discipline of attorneys and prescribes adjudication by a court of competent jurisdiction but provides no procedure.

Jurisdiction is being denied, leaving Motley with no adequate remedy at law to Raise his Constitutional concerns of Virginia Procedure.

ARGUMENT:

It has never been adjudicated, whether Motley's Bill of Complaint seeks relief

beyond the State provided jurisdiction and procedure.

Jurisdiction is the foundation of the ability to raise procedural issues. To deny jurisdiction, is to deny Constitutional Review, which is the purpose the Declaratory Judgment Act was enacted to remedy.

CONCLUSION

The District Court never addressed what other, if any, remedies Motley had available. If there is/was no other remedy, declaratory judgment is proper; but to deny jurisdiction, is to deny the right to challenge whether Constitutional Guarantees have been violated by State Process. Jurisdiction is sine qua non with respect to U.S. Constitutional Rights.

E. WHETHER THE VIRGINIA STATE BAR AND SUPREME COURT OF VIRGINIA'S ATTORNEY DISCIPLINARY PROCEDURE, RULES OF SUPREME COURT OF VIRGINIA, PART 6, WHICH DEPRIVES A PERSON OF LIFE, LIBERTY AND PROPERTY WITHOUT DUE PROCESS OR EQUAL PROTECTION AS PRESCRIBED BY THE U.S. CONSTITUTION, AMENDMENTS V &

XIV, BEFORE APPELLANT'S STATE ISSUED LICENSE IS SUSPENDED OR REVOKED, IS A CONTROLLING TACTIC THAT VIOLATES THE U.S. CONSTITUTION, AMENDMENT XIII AS A BADGE AND INCIDENT OF SLAVERY?

RULE:

> No person shall be held to answer for a capital, or otherwise infamous crime unless on a presentment or indictment of a grand jury... nor be deprived of life, liberty, or property, without due process of law... U.S. Constitution, Amend. V

> No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. U.S. Constitution, Amend. XIV

> The denial of such accommodations and privileges is, in itself, a subjection to a species of servitude within the meaning of the U. S. Constitution, Amend. XIII

FACTS:

Petitioner's License to practice law has been suspended and revoked without affording petitioner a hearing by a Court of Competent

jurisdiction. Victor A. Motley v. Virginia State Bar, (Appendix p. 21)

Petitioner has had no hearing by a Court of Competent Jurisdiction as to whether a Warrantless Search was committed in violation of the U.S. Constitution, Amend. IV

The Virginia State Bar and Supreme Court of Virginia have entered an Order and placed on the Internet that Motley has been found to have committed the Unauthorized Practice of Law, a misdemeanor, when Motley has never been charged, tried, indicted nor had a presentment served on him as required by the U.S. Constitution, Amend. V

Alcohol Beverage Commission Licensees are afforded an appeal to the Circuit Court when the Commission suspends their State License. Code of Virginia, Sec. 4.1-227

Before the State can attach a Virginia Income Tax Return, the attachee has the right to petition for Judicial Review in a court of competent jurisdiction. Code of Virginia, Sec. 58.1-527

Before a driver's license, which is a privilege and not a right, can be suspended or an offense placed on the driving record, the licensee is afforded a hearing in a court of competent jurisdiction.

Before an optometrist or dentist can be restrained/detained of his license, he/she has 30 days to appeal the decision of the Virginia Board of Optometry/Dentistry to a Circuit Court.

Even the foreign alleged terrorist in Guantanamo Bay, Cuba are entitled to a Due Process hearing.

A Virginia State Bar Licensee, an officer of the State and Federal Court, has no right to be heard by a court of competent jurisdiction before his State License is suspended, revoked or have charges of misconduct placed on his record, publicly available on the Internet, with no procedure for judicial recourse.

ANALYSIS

If appellant was tried criminally, in defense of himself, he would be entitled to a reading of his Miranda Rights, discovery, an arraignment, an appeal from the General District Court to a Court of Record, appeal to the Court of Appeals, appeal to the Supreme Court of Virginia, appeal to the U.S. Supreme Court, would be entitled to his U.S. Constitution, 5t^{h} Amendment Rights, be able to file a Writ of Habeas Corpus in the State and Federal Courts and be able to file for Declaratory Judgment in State and Federal Courts to verify that his Constitutional Rights were not violated.

Yet the Virginia State Bar can try petitioner for a crime, to be adjudged by a Committee not appointed by the Virginia General Assembly that has not taken an oath to uphold the laws of the United States and the Commonwealth, with no right to discovery or other procedural method to challenge the evidence, not be entitled to Habeas Corpus review and be convicted on evidence not reviewable by U.S. Constitutional standards.

Failure to comply with State law amounts to a violation of an interest protected by the U.S. Constitution, Amend. XIV; Counts v. Newhart, Supra.

To deny Constitutional Rights is to CONTROL, a badge and incident of slavery, protected against by the U.S. Constitution, Amend. XIII

The Virginia State Bar and Supreme Court of Virginia, acting administratively, are not above the U.S. Constitution, the Supreme Law of the Land.

CONCLUSION

The District Court never addressed or gave a rational basis for why Virginia State Bar Licensees are treated differently from other State Licensees or criminal defendants.

Without U.S. Constitutional Guarantees, the Bill of Rights, as afforded other state licensees and citizens, leaves attorneys subject to arbitrary control, a Badge and Incident of Slavery.

F. WHETHER THE INTERTWINEMENT BETWEEN STATE BAR AND FEDERAL BAR LICENSURE AND THE AFFECT OF STATE ACTION ON AN ATTORNEY'S ABILITY TO PRACTICE LAW FEDERALLY, THE FOREIGN CITIZENS

RIGHT TO ACCESS TO LEGAL COUNSEL, AND THE EFFECT A DIVERSITY OF LEGAL MINDS BRING TO THE COURTS, SAID STATE ACTION VIOLATES THE U.S. CONSTITUTION, SAID STATE ACTION ALSO VIOLATES THE INTERSTATE COMMERCE CLAUSE, U.S. CONSTITUTION, ART. I, SEC. 8 AND WHETHER THE DISTRICT COURT WOULD/SHOULD TAKE JURISDICTION?

RULE

> The Congress shall have power to...regulate commerce with foreign nations, and among the several states.. U.S. Constitution, Art. I, Sec. 8

All attorneys practicing law in Federal Agencies must be licensed by a State Bar, but not necessarily by the State where their office is located.

A State Bar Disciplinary Procedure has a direct effect on a Bar Licensee to practice Federally, even if the attorney will be located in another State.

A Virginia State Bar Disciplinary Procedure Is having a direct effect on a U.S. citizen's access to legal counsel.

The Virginia State Bar is a State Agency intertwined with Federal Bar Licensure, not a private club.

FACTS

Motley still holds a U.S. Bar License. Motley has an Application pending for the Position of Federal Public Defender for the U.S. District Court for the Eastern District of Virginia, which this intertwinement between State and Federal Bar Licensure will not qualify him for.

State Licensure will adversely affect his right to "life, liberty and the pursuit of happiness" (a job) even though he will not be in State Court and is still licensed Federally.

Motley is also being denied the right to practice in the U.S. Bankruptcy Court, and is still licensed.

ANALYSIS

Bar Licensure is not purely a State issue. Without application of U.S. Constitutional Rights, a state has the power to affect which attorneys may practice Federally, control the issues and arguments that come before State and Federal Courts and limit U.S. citizens access to legal representation in interstate commerce matters. The Federal Courts have a long history of prohibiting violations of Civil Rights through the Interstate Commerce Clause. U.S. Constitution, Art. I, Sec. 8

CONCLUSION

The District Court never addressed the intertwinement of Federal and State Bar Licensure and its affect on Interstate

Commerce, its affect on controlling which attorneys can practice law federally and on foreign citizens access to legal counsel, as such this action should be REMANDED to the U.S. District Court.

CONCLUSION

The District Court's Dismissal for Lack of jurisdiction did not address the distinction Rooker makes between "seeking review of State Court decisions and challenging the Constitutionality of the Process by which the State Court Decree resulted".

Material facts, findings and conclusions in the Rooker Doctrine are in conflict with prior decisions of the United States Supreme Court and the U.S. Constitution.

The intertwinement between State and Federal Bar licensure involves questions of exceptional importance that have not been addressed previously.

THE ONLY ISSUES BEFORE THIS COURT ARE; THE CONSTITUTIONALITY OF VIRGINIA PROCEDURE AND "THE RIGHT TO BE HEARD". WITHOUT A FORUM, THERE ARE NO U.S. CONSTITUTIONAL, BILL OF RIGHTS, GUARANTEES.

Sine qua non.

WHEREFORE, petitioner, Victor A. Motley, pro se, prays that this Petition for Writ of Certiorari be GRANTED.

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APPENDIX

U.S. District Court ED VA

District Court Order.....A1

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U.S. Court of Appeals, 4th Cir.

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U.S. District Court Order; Victor A.
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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

VICTOR A. MOTLEY,
Plaintiff,
v. Civil Action No. 3:05cv427
VIRGINIA STATE BAR and
SUPREME COURT OF VIRGINIA,
Defendants.

MEMORANDUM OPINION

This matter is before the court on the defendants' Motion to Dismiss (Docket No. 5) filed by the Virginia State Bar ("VSB") and the 12(b)(1). The plaintiff is Victor A. Motley (Motley"), a Virginia lawyer whose license to practice has been revoked. For the reasons set forth below, the motion to dismiss is granted under Fed. R. Civ. P. 12(b)(1).

STATEMENT OF FACTS

Under Virginia Law, the Supreme Court of Virginia is charged with regulating the practice of law in the Commonwealth and disciplining Virginia attorneys when necessary. Va Code Ann., Sec. 54.1-3909 (2005). To that end, the Virginia State Bar serves as an administrative arm of the Supreme Court of Virginia for

the purpose of developing and promulgating ethics regulations, and investigating, prosecuting and reporting ethics violations. Id. At Sec. 54.1-3910. Prosecution of misconduct occurs before VSB District Committees, the VSB Disciplinary Board or, under alternative procedures not at issue here, a state circuit court. Id. At 54.1-3935; see generally R. of Va. Sup. Ct. Pt. 6 ,Sec. 4, Para. 13 (Procedure for Discipline, Suspending, and Disbarring Attorneys).

On March 28, 2003, following certification of Charges of misconduct by the Third District Committee of the Virginia State Bar and a hearing, which Motley attended, before the Virginia State Bar Disciplinary Board (the Board), the Board revoked Motley's license to practice law in Virginia. Order, April 22, 2003, VSB Nos. 00-032-0680, 01-032-3160. Motley appealed the order to the Supreme Court of Virginia, which affirmed the Board's order of revocation. Compl. Para 3 (Docket No. I).

In a four page complaint (entitled "BILL OF

COMPLAINT" (Docket No. 1), augmented by an appended 41 page MEMORANDUM OF LAW (Docket NO. 2), Motley attacks the jurisdiction of, and factual and legal conclusions made by, the VSB District Committee and Disciplinary Board and the Supreme Court of Virginia. By way of relief, Motley asks the court to overturn virtually every decision made by either the VSB or the Supreme Court of Virginia and then to enjoin the order revoking his license to practice law. See BILL OF COMPLAINT; MEM OF LAW.

Defendants moved to dismiss the action for lack of jurisdiction, plead that the statute of limitations barred Motley's claims, and interposed a plea of sovereign immunity under the Eleventh Amendment of the United States Constitution. Mem. In Supp. Of Mot. To Dismiss (Docket No. 6).

DISCUSSION

STANDARD OF REVIEW

Defendants have moved to dismiss for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1). A Rule 12(b)(1) challenge may take two forms: either a facial or a factual challenge to the allegations in the complaint. See Walker v. Unites States Dept. of the Army, 60 F. Supp. 2d 553, 555 E.D. VA. 1999) (citing Adams v. Bain, 697 F. 2d 1213, 1219 (4th Cir. 1982). Under either form, the plaintiff bears the burden of proving that subject matter jurisdiction properly exists in the federal court. See Evans v. B.F. Perkins Co., a Div. Of Standex Int'l Corp., 166 F. 3d 642, 647 (4th Cir. 1999).

In deciding a factual challenge, the court accepts as true the jurisdictionally significant facts claimed by the non-moving party and then determines whether those facts are significant facts claimed by the non-moving party and then determines whether those facts are sufficient as a

matter of law to establish subject matter jurisdiction. Adams, 697 F. 2d at 1219. In contrast, in a fact-based challenge, the court must determine the veracity, rather than the sufficiency, of the non-movant's factual allegations. Taubman Realty Group Ltd. P'ship v. Mineta, 198 F. Supp. 2d 744, 754 (E.D. Va 2002); Valentin v. Hospital Bella Vista, 254 F3d 358, 362 (1st Cir. 2001) (discussing the differences between factual challenges and facial challenges). Here, the Rule 12(b)(1) motion challenges the sufficiency, rather than the veracity of Motley's jurisdictional facts. Thus, the Court accepts Motley's factual allegations as true; and, on that basis, determines whether subject matter jurisdiction exists. For the reasons set forth below, the Motion to Dismiss is Granted because there is no subject matter jurisdiction.

II. THE ROOKER-FELDMAN DOCTRINE

The defendant assert that the Court lacks subject matter jurisdiction over any of Motley's claims by virtue of what has become known as the Rooker-Feldman doctrine. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923). The Rooker-Feldman doctrine establishes the rule that federal district courts lack jurisdiction to hear constitutional claims that have been adjudicated by state courts or claims that are "inextricably intertwined with the merits of a state court's [judgment]." Feldman, 469 U.S. at 483 n. 16; Suarez Corp. Indus. V. McGraw, 125 F. 3d 222, 228 (4th Cir. 1997); Jordhl v. Democratic party of Virginia, 122 F. 3d 192, 199(4th Cir. 1997) ("The Rooker- Feldman

doctrine precludes federal review of adjudications of the state's highest courts...").

However, "the Rooker-Feldman doctrine applies only where the plaintiff is seeking, in federal court, "review of, or relief from, a state action or proceeding that is essentially judicial in nature." Edmonds v. Clarkson, 996 F. Supp. 541, 546 (E.D. Va. 1998) (quoting Saurez, 125 F. 3d 228 (4th Cir. 1997) (emphasis in original). Moreover, the claim raised in state court or, under the "inextricably intertwined" aspect of the doctrine, the plaintiff must have had an opportunity to raise that claim during the state proceedings. Feldman, 460 U.S. at 483 n. 16 ("even if a claim is not presented to a state court, or by inference is not ruled upon [even if

presented] , a plaintiff is not entitled to bring that claim in federal court if the claim was one that should have been brought in the state court."); Guess v. Board of Medical Examiners, 967 F. 2d 998, 1003 (4th Cir. 1992).

Where these preconditions are established, a federal district court lacks subject matter jurisdiction if, to grant the plaintiff relief, "the federal court must determine that the [state} court judgment was erroneously entered or must take action that would render the judgment ineffectual." Jorhdahl, 122 F. 3d at 202 (quoting Ernest v. Child Youth Servs, of Chester County, 108 F 3d 486, 491 (3rd Cir. 1997) (alteration in original).

In Rooker, the Supreme Court held that the only federal court empowered

to review the judgment of a state court is the Supreme Court of the United States. 263 U.S. at 416. Thus, the Supreme Court has stated that the Rooker-Feldman doctrine might completely foreclose federal review of some constitutional claims. Feldman, 460 U.S. at 483 n. 16 ("by failing to raise his claim in state court a plaintiff may forfeit his right to obtain review of the state court decision in any federal court.").

" These foundational principles inform the resolution of the motion to dismiss.

III. The Proceedings of the Virginia Bar Association and the Decision of the Supreme Court of Virginia are Judicial in Nature

For purposes of the Rooker-Feldman doctrine, a proceeding is judicial in nature if the "judicial inquiry investigation, declares and enforces liabilities as they

stand on present or past facts and under laws supposed already to exist." Feldman, 460 U.S. at 477 (quoting Prentis v. Atlantic Coast Line Co., 211 U.S. 210,226 (1908). Importantly, the nature of the proceeding is determined not by the character of the body conducting the proceedings, but rather by the nature, character, and effect of the proceedings themselves. Feldman, 460 U.S. 481 (citing In re Summers, 325 U.S. 561, 567 (1945); Prentis, 211 U.S. at 226-27; Hunter v. Supreme Court of New Jersey, 951 F. Supp. 1161, 1171 (D.N.J. 1996).

In Motley's case, the Supreme Court of Virginia affirmed the decision of the VSB Disciplinary Board, which, in turn, reviewed and affirmed the District committee's recommendation that Motley be disbarred. A review of the procedures of the District Committee and the Board demonstrates that their proceedings are judicial in nature.

Proceedings before both the district Committee, which is composed of four attorneys and one non

attorney, and the Disciplinary Board, which is composed of sixteen attorneys and four non-attorneys, commence with the notification of the respondent of the proceedings against him or her. Va. R. Sup. Ct., Pt. 6, Sec. 4, Para. (B)(2)(b)(3) (Committee); at Para. 13(B)(4)(a) (Board). The respondent may file a written answer and may conduct discovery. Both bodies conduct public hearings where Bar Counsel and the respondent submit evidence, examine witnesses, and present factual and legal arguments. These bodies resolve only the matter before them based on existing law, rules and precedent. Imposition of a sanction on the respondent requires clear and convincing evidence of misconduct. The Board and District Committee each issues a determination in writing setting forth findings of fact and legal support for their decisions. See generally Va. R. Sup. Ct., Pt. 6, Sec. 4, Chap. 13(H)(1)-(2)(m) (Committee); id. At (I)(1)-(3) (Board). When the District Committee believes disbarment is the proper sanction to impose on a

respondent, the Committee must certify the case to the Disciplinary Board, which has the authority to revoke a license to practice law. Finally, a respondent has the right to appeal an order of the Disciplinary board to the Supreme Court of Virginia. Id. at 13(J)(1).

The proceedings of the Disciplinary Board and the District Committee are decidedly judicial in nature. They bear all the hallmarks of judicial proceedings including; impartial adjudicators public hearings, discovery, the opportunity to examine and cross examine witnesses, to submit evidence, to make legal and factual arguments, a written, fact-driven legal adjudication, and a right to appeal. This conclusion is in accord with the law in the Fourth Circuit. See e.g. Allstate Ins. Co. v. West Virginia State Bar, 233 F. 3d 813, 817 (4th Cir. 2000) holding that the proceedings of the West Virginia State Bar Committee on the Unlawful Practice were judicial in nature based on hallmark similar to those discussed herein).

Additionally, this Court has previously held that

proceedings of the Judicial Inquiry Review Commission (JIRC) of Virginia, the body charged with investigating and adjudicating judicial ethics violations, constitute judicial proceedings for the purpose of the Rooker-Feldman doctrine. Edmonds, 996 F. Supp. 547 (E.D. Va 1998) The Judicial process used by the VSB and the JIRC are almost identical. See id. At 546-47 (discussing the procedure of the JIRC). The decision in Edmonds, the Fourth Circuit's decision in Allstate, and the analysis above establish that the proceedings of the Disciplinary Board and the District Committee are judicial in nature.

Similarly, while the pleadings do not establish exactly what arguments were made in this matter before the Supreme Court of Virginia, the Supreme Court Rules grant a respondent in a disciplinary action an appeal of right and an opportunity to present legal argument to the court. Rules of the Sup. Ct. of VA, Pt. 6, Sec. 4, Chap. 13(J)(1)(4). It requires no further inquiry to conclude that appellate review by the

Supreme Court of Virginia is unquestionably judicial in nature.

IV. The Court Lacks Subject Matter Jurisdiction Under The Inextricably Intertwined Prong

Having determined that the proceeding of the District Committee, the disciplinary Board, and the Supreme Court of Virginia are judicial in nature, it is now necessary to ascertain whether the claims that Motley brings in this action were either adjudicated in the state proceedings or were inextricably intertwined with those proceedings.

The pleadings do not disclose exactly which claims Motley raised during the state proceedings. That is of no moment because the inextricably intertwined prong of the Rooker-Feldman doctrine bars federal district court jurisdiction over claims so long as two preconditions are met. First, the plaintiff must have had an opportunity to raise in the state proceedings the claims that are presented in federal court. Feldman, 460 U.S. at 483 n. 16 (See infra Part I). Second,

resolution of the claims by the federal district court in favor of the plaintiff must reverse or render ineffectual the state tribunal's determinations. Pennzoil Co. v. Texaco, Inc., 481 U.S. at 25 (see infra. Part I). Jordahl 122 F.3d at 202 (see infra Part I).

A. Motley had an Opportunity to Present His Claims during the State Proceedings

In his Memorandum of law, Motley styles the allegations in this action as nine claims. Three of these claims allege that the decisions of the VSB rested on insufficient evidence. Two claims argue that the VSB violated Motley's Fourth Amendment rights as a consequence of improper searches and seizures. The other four claims allege various deprivations of due process arising from evidentiary, procedural, or jurisdictional errors made by the state adjudicative bodies. See Memorandum of law pp. 13,18,21,23,30,32,34 (Docket No. 2).

The disciplinary adjudicative process describes in Part III of this opinion afforded motley ample and

repeated opportunity to present those arguments at all three levels of the disciplinary process and to petition for review of those arguments on appeal. Motley would have had opportunity to seek review of his factual and constitutional claims before both the Disciplinary Board and the Supreme court provided that he properly had raised those claims and had preserved them for appeal.

B. Relief in Federal court would constitute reversal of the VSB and Supreme Court of Virginia

A review of motley's nine claims demonstrates that a decision in favor of motley would reverse or render ineffectual the determinations of the state adjudicative bodies involved. See Jordahl, 122 F.3d at 202 (citing Ernst, 108 F3d at 491). Indeed, review of Motley's claims would, in violation of the Rooker Feldman doctrine, "be the equivalent of an appellate review of the [state court] order," Jordhl, 122 F3d at 202. Granting Motley relief on his evidentary claims would directly reverse the determinations made by the Supreme Court of Virginia. Granting Motley

relief on his constitutional claims would render ineffective the state decisions by finding them constitutionally insufficient. The Rooker-Feldman doctrine precludes precisely those results and requires the conclusion that this Court lacks subject matter jurisdiction to hear motley's claims.

CONCLUSION

For the foregoing reasons, Defendant's MOTION TO DISMISS IS GRANTED and plaintiff's complaint is dismissed without prejudice.

The Clerk is directed to send a copy of this Memorandum Opinion to the plaintiff and to counsel for the defendants.

It is so ORDERED.

United States District Judge

Richmond, Virginia
Date: 9/22/05

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

VICTOR A. MOTLEY,
Plaintiff,
v. Civil Action No.: 05cv427

VIRGINIA STATE BAR and
SUPREME COURT OF VIRGINIA,
Defendants.

ORDER

Having considered the plaintiff's Motion to Rehear/Reconsider...it is hereby ORDERED that the Amended Motion to Rehear (Docket No. 25) is denied on its merits...

United States District Court Judge
Richmond, Virginia
Date: Oct. 12, 2005

UNITED STATES COURT OF APPEALS
for the Fourth Circuit

VICTOR A. MOTLEY,
Plaintiff- Appellant

v. Case No 05-2265
CA-05-427

VIRGINIA STATE BAR, and

SUPREME COURT OF VIRGINIA,
Defendants-Appellees

Appeal from the United States District Court

for the Eastern District of Virginia at Richmond

In accordance with the written opinion of this

Court filed this day, the Court affirms the judgment

of the District Court. ...

Clerk
Filed April 25, 2006

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

VICTOR A. MOTLEY,
Plaintiff-appellant,

v. No. 05-2265
CA-05-427

VIRGINIA STATE BAR and
SUPREME COURT OF VIRGINIA,
Defendants-Appellees.

On Petition for Rehearing En Banc

The appellant's petition for rehearing en banc was submitted to this Court. As no member of this Court requested a poll on the petition for rehearing en banc.

IT IS ORDERED that the petition for rehearing en banc is denied....

For the Court,

Clerk
Filed June 6, 2006

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

VICTOR A. MOTLEY,

Petitioner

v. Civil Action Number 3:01CV41

JOSEPH A. CONDO and

VIRGINIA STATE BAR,

Respondents.

FINAL ORDER

This matter is before the Court on a petition for writ of habeas corpus filed by petitioner. He seeks relief from an Order entered by the Virginia Supreme Court in Record No. 000417 which purportedly affirmed an order of the Virginia State Bar Disciplinary Board upholding findings upon which the petitioner's license to practice law was suspended for eighteen months.(1) Petitioner does not allege that he is "in custody in violation of the Constitution or laws or treaties of the United States" as required in order to seek relief pursuant to 28 U.S.C. Sec. 2254. Petitioner claims only that the decision of the Virginia Supreme Court is "a restraint on petitioner's liberty as defined in Jones v. Cunningham, 371 U.S. 236(1963)." Recently, the United States Supreme Court

stated that although the writ of habeas corpus demands "application of basic constitutional doctrines of fairness (citing Jones v. Cunningham)," it also stated that the writ "demands...conviction by a court of competent jurisdiction (citations omitted)." Lonchar v. Thomas, 517 U.S. 314,322 (1996). Since the petitioner does not allege a conviction by a court of competent jurisdiction, this petition is DISMISSED FOR LACK OF JURISDICTION.

Petitioner is advised that he has the right to appeal the decision of the Court. Should he wish to do so, written notice of appeal must be filed with the Clerk of the Court within thirty (30) days of the date of entry hereof. Failure to file a timely notice of appeal may result in the right to appeal.

It is so ORDERED.

Let the Clerk send a copy of this Order to all counsel of record and to Mr. Motley.

Jan. 23, 2001 _____

DATE SENIOR U.S. DISTRICT JUDGE

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1. Two similar petitions were filed on the same date, each also seeking relief from orders issued by the Virginia Supreme Court, both of which issued a public reprimand, in Records

Number 000392 and Number 001306. Those petitions were assigned Civil action Numbers 3:01CV040 and 3:01CV042 respectively.